THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17311 OF 2006

ORDER:

The petitioner herein having passed her Intermediate examination with Botony, Zoology, Physics and Chemistry as optionals, appeared for EAMCET 2006. She secured a rank of 5587 in General Category and her rank in minority category was 277.

The respondents 3 and 4 are the minority institutions of Medical Sciences. They invited applications from the candidates belonging to minority communities qualified in EAMCET 2006 for admission into 1st year MBBS for the academic year 2006-07. The petitioner submitted her applications in both the Colleges on 24.7.2006 and appeared for the counselling on 27.7.2006 and 28.7.2006. It is alleged that the respondents 3 and 4 did not finalise the selection, and did not display the selected list of meritorious candidates, as required under the Statutory Rules, but, on the other hand, the candidates who secured lesser rank in EAMCET 2006 were given seats by collecting huge amounts as donations. Aggrieved by the said action of the respondents, this writ petition is filed with the following prayer:

> "….to fill up the management seats of B' category 30% of the sanctioned in take of the seats in MBBS first year Degree Course in accordance with the A.P. Un-aided Minority Professional Institutions (Regulations of Admissions into under-graduate Medical & Dental Professional Courses) Rules, 2006 issued in G.O.Ms.No272, Health, Medical & Family Welfare (E1) Department dated 10.7.2006 and give admission to the petitioner in MBBS first year course for the academic year 2006-07 in one of the colleges of respondents 3 and 4……."
>
> "…….to reserve one seat in first year MBS course for the academic year 2006-07 in one of the colleges of respondents 3 and 4 pending the writ petition…"

Though no counter-affidavit has been filed on behalf of

respondents 1 to 3, the 4th respondent filed a detailed counter denying the allegations made by the petitioner and stating that they have strictly followed the procedure prescribed under G.O.Ms.No.272, dated 10.7.2006.

I have heard the learned counsel for both the parties and perused the material on record.

At the outset, the procedure prescribed for admission into Minority Medical Colleges may be noted as under :

In pursuance of the Judgment of the Supreme Court in **P.A. Inamdar v. State of Maharastra**[1], and the discussions held with the Private Unaided Minority Medical/Dental Colleges in the State for admission into Under Graduate Courses, i.e., MBBS & BDS, the Government decided to permit managements of the minority institutions to fill up 70% of seats with students belonging to the concerned Minority Community on the basis of the rank obtained in EAMCET. The balance of 30% seats shall be filled up by the Managements in a fair, transparent and non-exploitative manner. For the said purpose, in exercise of the powers conferred by Sections 3 & 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fees) Act, 1983 and in supersession of the Rules made earlier in G.O.Ms.No.217 dated 23.7.2004, new Rules were made under G.O.Ms.No.272, Health Medical & Family Welfare (EI) Department dated 10.7.2006. The said Rules called A.P. Un-aided Minority Professional Institutions (Regulation of Admission into Under Graduate Medical and Dental Professional Courses) Rules, 2006 (for short “the Rules”), are made applicable to all Un-aided Minority Professional Institutions imparting Under Graduate Professional Courses in Medical and Dental Courses. The said Rules in detail prescribe the procedure for making admissions to the EAMCET ranking based Management Seats

as well as Management Seats.

Under Rule 3 (b) of the Rules, the Educational Qualifications to be satisfied by the candidates seeking admission into Medical and Dental Courses, has been prescribed as under:

> " (b) Educational Qualifications: The Candidates should pass two years Intermediate examination (10+2 pattern) or equivalent examination with Physics, Chemistry, Botany, Zoology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, Botany and Zoology at the qualifying examination."

It is also relevant to note Rule 4 of the Rules, which provides for allotment of seats among the seats classified as Category-A. Rule 4 runs as under:

> "Category-A – (70% of the sanctioned intake of the seats) EAMCET Based Management seats:- These seats shall be filled by the Managements of the Minority Institutions in a transparent manner based on EAMCET merit with candidates belonging to the concerned Minorities.
>
> Category-B – (30% of the sanctioned intake of the seats) Management Seats:- These seats shall be filed by the individual Minority Institutions college in the order of merit in a transparent manner as specified in Rule 6(b)."

It is clear from Rule 5 of the Rules that all the EAMCET based management seats under Category-A, shall be filled by the management of the minority Institutions based on EAMCET merit with candidates belonging to the concerned minorities. So far as Category-B, which are known as Management Seats are concerned, the same shall be filled by the individual college managements in the order of merit in a transparent manner, for which a detailed procedure has been prescribed under Rule 6(b), as under:

> "6(b) **TO FILL UP MANAGEMENT SEATS:**
>
> (B-Category – 30% of the sanctioned intake of the seats)
>
> (a) "Management Seats" – the seats shall be filled up by the individual college Managements in the order of merit in the transparent manner following the procedure as detailed

below:

(1) Applications shall be called for from prospective candidates seeking admission in the individual colleges.

(2) The college shall issue a receipt for the applications received.

(3) The college shall display the list of applications received and prepare a merit list based o the marks obtained in the qualifying examination.

(4) Admissions shall be made by the college based on merit list so prepared.

(b) The candidates who have passed the qualifying examination not from the State have to submit the equivalency certificate to NTR University of Health Sciences, Vijayawada, A.P."

It is clear from the above that the criteria for being granted admission in Category-A seats is the rank in EAMCET, whereas the merit in the main group of the qualifying examination is the basis for Category-B admissions."

In the light of the above provisions, it is necessary to examine whether the allegation of the petitioner that respondents failed to consider her case either against Category-A seats or against Category-B seats, is established.

It is not in dispute that the petitioner secured 94.20% marks in the qualifying examination in Intermediate examination, which is the qualifying examination for admission into Under Graduate Medical Courses. She secured the rank of 5587 in the EAMCET-2006.

In the counter-affidavit filed on behalf of the 4th respondent, it is explained that after receipt of the applications in response to the paper notification issued by the college, a merit list was displayed on 26.7.2006. On 27.6.2006 the first phase of counselling was conducted in which 13 students in Category-A submitted the originals and paid the fees. Accordingly, their admissions were finalized on the same day. 62 other students who attended the counselling on 27.6.2006 sought time till 29.7.2006 for submission of originals as well as payment of fees. However, out of them only 8 students submitted their originals and paid the fees and, accordingly, their admissions were finalized. Thereafter, the second merit list

was prepared and displayed on 30.7.2006 inviting them to attend the counselling on 31.7.2006. In the second phase of counselling the students in the order of merit, as they figured in the second merit list were called and such of those students in the order of merit, who were present with originals and fees along with other documents were granted admission. Thus, the admissions in Category-A to the extent of 70 seats were finalized by 4.00 p.m. on 31.7.2006.

So far as Category-B admissions, it was announced through the Public Address System on 31.7.2006 that the counselling would commence at 5.00 p.m. on the same day and such of those students who are left out in Category-A seats and those candidates who applied exclusively in Category-B may participate in the counselling. Accordingly, among the candidates who participated in the counselling, such of those candidates who fulfilled the required conditions, were offered admissions in the order of merit in Category-B seats and the admissions were concluded by 7.00 p.m. on 31.7.2006.

It is explained that while following the above process a few students who with superior merit among the applicants had to be left out for the reasons such as their absence during the counselling, their unwillingness to confirm administration, failure to submit originals and payment of fees.

So far as the petitioner is concerned, it is stated that she is ranked at Sl.No.163 in the general merit list and in the list of non-local candidates, she is at Sl.No.34. Since she belongs to Sri Venkateswara University, the petitioner is required to be considered in the unreserved 15% of the seats, whereas all the local area candidates belonging to Osmania University are considered in the 85% reserved seats. Thus, out of 70 seats available in Category-A, 60 seats were earmarked for local area candidates against 85% and the remaining seats

were unreserved. Out of 75 non-local students, the last rank in non-local student has been the rank of 3412. Hence, the petitioner who secured the rank of 5585 could not get admission in the non-local category.

So far as Category-B is concerned, the petitioner did not opt for being considered in the said category, since she was not ready with payment of Rs.4,50,000/- which is necessary as notified by the 4th respondent-College along with merit list displayed on 31.7.2006 itself. It is also pointed out that all the candidates who were given admission against Category-B seats had secured the minimum qualifying marks of 50% in the qualifying examination.

The learned counsel appearing for the 4th respondent – College thus contended that the procedure adopted by the 4th respondent was in accordance with the Statutory Rules.

However, the learned counsel for the petitioner contended that the 4th respondent-College committed a grave error in considering the petitioner under the category of non-local candidates. The learned counsel contends that so far as minority educational institutions are concerned they are meant for minorities of the entire State and there cannot be further classification as local and non-local. It is also contended that two candidates viz., Sadia Khader, at Sl.No.31 and Zareena Begum, at Sl.No.70 did not secure the minimum qualifying marks of 50% in the optionals and, therefore, the respondent No.4 ought not to have considered their cases.

It is to be noted that Article 371-D of the Constitution of India makes a clear provision for equal opportunities for people of different areas of the State of Andhra Pradesh in the matter of not only the public employment, but also admission into educational institutions. Clause (10) of the Article 371-D gives

an over-riding effect over any other law or even other constitutional provisions. Hence, Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974, which was made in exercise of the powers conferred under Article 371-D (1)(2) of the Constitution of India shall have over-riding effect over any other Statute, Ordinance, Rule, Regulation or other order, in respect of admission to any University or to any other educational institutions subject to the control of the State Government. Having considered the said issue in detail a Division Bench of this Court in **J. Sameerana v. A.P. State Council for Higher Education**[2], held that all private Engineering Colleges in the State, including minority educational institutions are subject to the control of the State Government within the meaning of Para-1 of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 and therefore, all admissions to the said institutions shall be made only in accordance with Para 5(1) of the Presidential Order, which provides for reservation of 85% of seats in other courses of study in favour of local candidates. In the light of the settled legal position, I do not find any error in the procedure adopted by the 4th respondent-College in considering the petitioner's candidature among the non-local candidates. The contention of the learned counsel for the petitioner that the respondents ought not to have followed reservation of 85% of seats to the local candidates is without any substance and cannot be accepted.

So far as the other contention is concerned, it is to be noted that the Rule 3 (d) of the Rules made under G.O.Ms.No.184 dated 30.6.2004 called Andhra Pradesh Unaided Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2004, made it clear that in respect

of candidates belonging to SC, ST & BC categories, the marks obtained shall be a minimum of 40% taken together in Physics, Chemistry and Geology. The same has been reiterated by the 1st respondent-University in the prospectus for admission into the 1st year MBBS and BDS courses for the academic year 2006-07.

Since the candidates at Sl.No.31 and 70 belong to BC category, the action of the 4th respondent in not considering their case cannot be found fault with.

For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly, dismissed. No costs.

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(G. ROHINI, J.

24th October, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17311 OF 2006

24th October, 2006.

Between:

Kumari K. Nusrath-U-Zohara. .. Petitioner.

And

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Health Medical, Family Welfare Department,
A.P., Secretariat Buildings, Hyderabad
and others. .. Respondents.

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[1] 2005 SC 3226;

[2] 1998(2) ALD 460 (DB).